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THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

By Edwin Brown Firmage *

THE NEED

On March 13, 1969, the United States Senate by a vote of 83 to 15 consented to the ratification of a treaty described as "the most important international agreement brought before the U. S. Senate since the North Atlantic Pact"¹ and "the most important international agreement limiting nuclear arms since the nuclear age began."² Assuming a timely entry into force, the Treaty on the Non-Proliferation of Nuclear Weapons may delay incarnation of the specter which "haunted" John F. Kennedy:

I see the possibility in the 1970's of the President of the United States having to face a world in which 15 or 20 or 25 nations may have these [nuclear] weapons. I regard that as the greatest possible danger and hazard.³

The consequences of nuclear diffusion, and by inference the basic prophylactic purposes of any treaty banning proliferation, were seen by President Kennedy:

I ask you to stop and think for a moment what it would mean to have nuclear weapons in so many hands, in the hands of countries large and small, stable and unstable, responsible and irresponsible, scattered throughout the world. There would be no rest for anyone then, no stability, no real security, and no chance of effective disarmament. There would only be the increased chance of accidental war and increased necessity for the great powers to involve themselves in what otherwise would be local conflicts.⁴

To be effective, a non-proliferation treaty must prohibit both the production of nuclear weapons by presently non-nuclear-weapon states and the acquisition of nuclear weapons by states which do not have the capacity to produce their own. The former problem is increasingly acute as nations continue to develop peaceful applications of nuclear energy. Over 40 non-nuclear-weapon states have operating nuclear reactors. Ninety-nine new

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¹ Statement of Senator John Sparkman, Hearings on the Treaty on the Nonproliferation of Nuclear Weapons before the Senate Committee on Foreign Relations, 90th Cong., 2nd Sess. at 2 (1968).

² Message from President Lyndon B. Johnson to the Senate on the Treaty on the Non-Proliferation of Nuclear Weapons, July 9, 1968; 62 A.J.I.L. 954 (1968).

³ "Text of President Kennedy's News Conference on Foreign & Domestic Affairs," New York Times (Western ed.), p. 4, col. 7, March 22, 1963.

⁴ Hearings on the Arms Control and Disarmament Act Amendments before the House Committee on Foreign Affairs, 90th Cong., 2nd Sess. at 28 (1968).

nuclear power units have been recently announced. Since plutonium is both the by-product of nuclear reactors used for peaceful purposes such as generation of electric power or desalination, and the ingredient of nuclear weapons, a dilemma is posed: How do we reap the benefits of peaceful application of nuclear energy and avoid the specter of proliferation of nuclear weapons? Conservative estimates project that by 1985 there will be sufficient nuclear power reactors producing enough plutonium as a by-product to peaceful endeavors to produce 20 nuclear bombs a day.⁵ This potentially uncontrolled production of plutonium will result without or beyond any planned program directed at the production of nuclear weapons. The possibility for clandestine production of such weapons is obvious.

Many nations presently possess the capacity to produce nuclear weapons. The limiting factors relate much more to technological and industrial capacity rather than theoretical knowledge. If decisions are made by certain states to produce or otherwise acquire nuclear weapons, a geometric rise in the number of nuclear-weapon states might take place due to the snowballing effect such decisions would have upon potential enemies in various areas of regional tension.

The Atomic Energy Commission has reported that many nations could independently produce a few "rudimentary nuclear explosive devices" with unsophisticated means of delivery. Seven nations⁶ have the capacity to manufacture nuclear weapons and relatively sophisticated delivery systems within five to ten years from the time of a national decision to do so. Sixteen others⁷ possess slightly less capacity but could also produce such weapons and means of delivery roughly within the same time span.

Without question the major purposes of the treaty relate to the prevention of nuclear war. However, a not inconsiderable accomplishment of the treaty, if it is successful, will be the prevention of the diversion of badly

⁵ Nuclear reactors are fueled with natural uranium. Plutonium, a major element in nuclear weapons, is produced as a by-product of this process. See Speech by Under Secretary of State Nicholas Katzenbach, April 26, 1968, 1968 Proceedings, American Society of International Law 274.

"By 1985 the world's peaceful nuclear power stations will probably be turning out enough by-product plutonium for the production of tens of nuclear bombs every day. This capability must not be allowed to result in the further spread of nuclear weapons. The consequences would be nuclear anarchy, and the energy designed to light the world could plunge it into darkness." Message from President Lyndon B. Johnson, note 2 above.

⁶ Australia, Canada, Federal Republic of Germany, India, Italy, Japan and Sweden. Hearings on the Treaty on the Nonproliferation of Nuclear Weapons, note 1 above, at 31.

⁷ Argentina, Austria, Belgium, Brazil, Chile, Czechoslovakia, Hungary, Israel, Netherlands, Pakistan, Poland, South Africa, Spain, Switzerland, United Arab Republic, and Yugoslavia. *Ibid.*

For other projections on world megatonnage, numbers and names of nations potentially capable of joining the nuclear club in the next twenty years, see Kahn and Wiener, *The Year 2000* (1967); Sir John Cockcroft, "The Perils of Nuclear Proliferation," and David Inglis, "The Outlook for Nuclear Explosives," in *Unless Peace Comes* (N. Calder, ed., 1968).

needed resources into weapons production.⁸ Secretary General U Thant, at the request of the General Assembly, appointed a body of experts to determine the costs of nuclear weapon development.⁹ The findings of this body were that a moderate program involving the manufacture of 100 20-kiloton plutonium devices over ten years would cost \$188 million. Gaseous diffusion plants and development of thermonuclear weapons would be much more expensive. The biggest expense by far is not the explosive device but the delivery vehicle. While the treaty does not prohibit delivery vehicles possessing no bombs, warheads or other explosive devices, presumably most states will not produce a sophisticated delivery system without nuclear teeth. 30-50 jet bombers, 50 MRBM's and 100 plutonium warheads cost \$1.7 billion. 20-30 thermonuclear weapons, 100 IRBM's and 2 nuclear submarines cost \$5.6 billion. French expenditures for nuclear military capacity in 1969 are estimated at \$8.4 billion.¹⁰

THE PAST ¹¹

The first attempt to negotiate an agreement controlling atomic energy, the Baruch Plan,¹² proposed an international authority, the International Atomic Development Agency, to own or control all "dangerous" atomic materials from the mining process through manufacturing to the finished product. The IADA would have possessed sweeping inspection rights into those aspects of atomic energy which were not to be given it by monopoly. The United States offered to destroy its nuclear weapons and give its information and equipment to the IADA.

While the United States was by this proposal offering to give up a tremendous (though temporary) strategic advantage, its monopoly of nuclear weapons, the Soviets saw this proposal as an attempt to insure that they would never possess nuclear capacity. Since the IADA was to be a United Nations organ, and since Western Powers at that time controlled

⁸ See the comparative statistics on world military expenditures at p. 733 below.

⁹ United States Arms Control and Disarmament Agency, *International Negotiations on the Treaty on the Nonproliferation of Nuclear Weapons 93-94 (1969)* (hereinafter cited as *International Negotiations*).

¹⁰ *Ibid.*

¹¹ The best analysis of early U. S. arms control negotiations is in Bechhoefer, *Postwar Negotiations for Arms Control* (1961). For an analysis of the rôle of arms control and disarmament in Soviet foreign policy, see Larson, *Disarmament and Soviet Policy, 1964-1968* (1969), and Edwards, *Arms Control in International Politics* (1969). For an analysis of postwar attempts to curb the proliferation of nuclear weapons, see Firmage, "Anarchy or Order? The Nth Country Problem and the International Rule of Law," 29 *Missouri Law Rev.* 138 (1964).

¹² See Department of State, 1 *Documents on Disarmament: 1945-1956* (Pub. No. 7008). The Baruch Plan: Statement by the United States Representative [Baruch] to the United Nations Atomic Energy Commission, June 14, 1956, pp. 7-16 (1960). For the best account of the origin of the Baruch Plan, see Department of State (Pub. No. 2702), *The International Control of Atomic Energy: Growth of a Policy* (1946). Also see Department of State (Pub. No. 3161), *The International Control of Atomic Energy: Policy at the Crossroads* (1948); (Pub. No. 2498), *The Acheson-Lilienthal Report* (1946).

a preponderant majority of the votes in every United Nations organ, the Soviets saw little difference between this and outright United States control.

The negotiations on the Baruch Plan centered upon the chronology of nuclear disarmament by the United States and inspection under the IADA, the United States insisting upon inspection before disarmament, the U.S.S.R. demanding nuclear disarmament preceding inspection and control. While this prolonged debate continued, technological developments were rendering the plan untenable. In 1949 the Soviets exploded their first atomic bomb, to be followed in 1954 by a hydrogen device. As stockpiles of nuclear and thermonuclear bombs multiplied, the concept of international ownership as a prevention of proliferation became increasingly impossible of accomplishment. Following the Soviet explosion of a hydrogen device, international ownership was dropped from the arms control proposals of the United States.

In the same year in which the Baruch Plan was proposed, Congress acted to insure that the one state then possessing nuclear weapons would not spread such weapons to other nations. The McMahon Act¹³ and the legislation which succeeded it, the Atomic Energy Act of 1954, as amended in 1958,¹⁴ prohibit transfer of nuclear weapons in foreign commerce. These statutes permitted international co-operation in peaceful uses of atomic energy, and the transfer of fissionable material and certain non-nuclear parts for nuclear weapons to an ally who had made "substantial progress in the development" of nuclear weapons.¹⁵ This exception was aimed primarily at the United Kingdom which, together with Canada, had participated in the Manhattan Project. The basic prohibition upon the "transfer" of nuclear weapons was to become a central part of the Treaty on the Non-Proliferation of Nuclear Weapons.

While our first proposal looking toward a multilateral treaty prohibiting the transfer of nuclear weapons was part of a package offered in 1957,¹⁶ as early as 1954 the Federal Republic of Germany undertook not to manufacture nuclear weapons in its territory upon becoming a member of NATO and the Western European Union.¹⁷

President Eisenhower's Atoms for Peace Speech¹⁸ led to the creation of the International Atomic Energy Agency (IAEA) in 1956.¹⁹ The IAEA

¹³ Atomic Energy Act of 1946, 60 Stat. 755-775, 42 U.S.C.A. §§2011-2296.

¹⁴ Atomic Energy Act of 1954, as amended, 42 U.S.C. 2121; 72 Stat. 276.

¹⁵ *Ibid.* at §91(c), 42 U.S.C. §2121(c) (1964).

¹⁶ Department of State, Documents on Disarmament: 1957-1959, Proposals for Partial Measures of Disarmament 868-870.

¹⁷ Final Act of the Nine-Power Conference, London, Sept.-Oct., 1954: Protocol III to the Treaty of Brussels creating the Western European Union. 49 A.J.I.L. Supp. 134 (1955).

¹⁸ U.N. General Assembly, 8th Sess., Official Records 443 (1953).

¹⁹ International Atomic Energy Agency Statute, 1956, 8 U. S. Treaties 1093; T.I.A.S., No. 3873; 276 U.N. Treaty Series 3 (1956); 51 A.J.I.L. 466 (1957). For analyses of the Statute, See Bechhoefer and Stein, "Atoms for Peace: The New International Atomic Energy Agency," 55 Mich. Law Rev., 747 (1957); Firmage, note 11 above; Stoessinger, "The International Atomic Energy Agency: The First Phase," 13 Int. Organization 394 (1959).

is a United Nations organ with powers relatively autonomous from its parent body. It is composed of most of the Member States of the United Nations, including the United States and the Soviet Union. Its purposes are to promote the peaceful application of atomic energy and prevent diversion of fissionable material from peaceful purposes to nuclear weaponry. This Agency is charged with the responsibility of administering the safeguards system of the Treaty on the Non-Proliferation of Nuclear Weapons.

Articles III and XII of the IAEA Statute provide for a system of safeguards to prevent diversion of nuclear material. The safeguards system applies mandatorily to specified types of fissile material and facilities supplied a beneficiary state by the Agency (or by another state which has delegated safeguards functions to the Agency, as has the United States in its bilateral agreements since 1962). Under Articles III and XII, the Agency has extensive powers over its projects or bilateral or multilateral projects under IAEA safeguards, including: (1) access to all records of the project; (2) limited control over by-products; (3) a given number of inspections in the recipient states by IAEA inspectors at the Agency's own timing; (4) the right to suspend or terminate assistance on the ground of non-compliance; and (5) the duty to report non-compliance to the Security Council and the General Assembly.²⁰

Another method of impeding proliferation of nuclear weapons is the creation of nuclear-free zones. The first such proposal was made by Polish Foreign Minister Rapacki for a denuclearized zone in central Europe.²¹ Like so many other proposals concerning this crucial area, the plan was a victim of cold war tension. The extent to which the world has been forced to retreat from the major battlefields of the cold war to find suitable geography to denuclearize is seen by the fact that the first nuclear-free zone was created in Antarctica by treaty in 1959.²² The 1967 Latin American Nuclear Free Zone Treaty²³ will create a nuclear-free zone in that area. The 1967 Outer Space Treaty²⁴ includes an agreement forbidding the placement of nuclear weapons "in orbit around the Earth" or their installation "on celestial bodies" or their stationing "in outer space."

A major advance toward the accomplishment of effective international

²⁰ See Firmage, note 11 above, at 144-147.

²¹ See Address by the Polish Foreign Minister (Rapacki) to the General Assembly, Oct. 2, 1957, in Documents on Disarmament: 1957-1959, note 16 above, at 889; Note and Memorandum from the Polish Foreign Minister (Rapacki) to the American Ambassador (Beam), Feb. 14, 1958, *Ibid.* at 944; News Conference Remarks by the Polish Foreign Minister (Rapacki) Regarding an Atom-Free Zone in Central Europe, Nov. 4, 1958, *ibid.*, at 1217.

²² The Antarctic Treaty, Dec. 1, 1959, 12 U. S. Treaties (1961) 794; T.I.A.S., No. 4780; 402 U.N. Treaty Series 71 (1959); 54 A.J.I.L. 477 (1960).

²³ U.N. Doc. A/C.1/946 (1967). The United States and the United Kingdom signed Protocol II providing that both states would respect the treaty's aims not to use or to threaten to use nuclear weapons against the parties.

²⁴ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, T.I.A.S., No. 6347 (1967); 61 A.J.I.L. 644 (1967). See Larson, note 11 above, at 145-147, for an analysis of Soviet strategy on the treaty.

laws proscribing nuclear proliferation was made in the 1963 Partial Test Ban Treaty.²⁵ This treaty prohibited nuclear weapons tests in the atmosphere, in outer space, and under water. It was directed not only at the elimination of atmospheric pollution and radioactive fall-out but, perhaps more importantly, at impeding the development of nuclear weapons by making nuclear weapons-testing more costly and difficult.

NEGOTIATING THE TREATY

Both the United States and the Soviet Union included non-proliferation proposals within their disarmament packages in 1957.²⁶ In 1958 and 1959 Ireland introduced resolutions in the General Assembly supporting an international agreement prohibiting the transfer of nuclear weapons.²⁷ A similar Irish resolution was passed by the General Assembly in 1961.²⁸

From 1957 through the summer of 1966, the major difference between Soviet and U. S. drafts of a non-proliferation agreement concerned the permissibility of nuclear sharing arrangements within a regional organization such as NATO. The United States demanded that provision be made in any non-proliferation agreement that a concept such as the Multilateral Force (MLF) be permitted if the total number of states or organizations possessing nuclear weapons were not to be thereby increased. That is, nuclear weapons would not be transferred to a regional organization unless a nuclear-weapon state within that grouping transferred its entire nuclear force to such a regional organization. The United States argued that no proliferation would occur in that the number of entities possessing nuclear weapons would remain constant. The United States draft treaties submitted to the Eighteen-Nation Disarmament Committee (ENDC) at Geneva in August, 1965,²⁹ and March, 1966,³⁰ would have allowed such a regional force, while the Soviet draft of September, 1965,³¹ would not. However, events within the United States and in Europe soon eliminated this major point of difference.

The United States had proposed the MLF as a means of partially fulfilling any felt need of West Germany for the possession of nuclear weapons, while at the same time avoiding proliferation or independent German con-

²⁵ Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Underwater, Aug. 5, 1963, 14 U. S. Treaties (1963) 1313; T.I.A.S., No. 5433; 480 U.N. Treaty Series 43 (1963); 57 A.J.I.L. 1026 (1963).

²⁷ U.N. Doc. A/Res/1380 (XIV) (1959). ²⁶ See note 16 above.

²⁸ General Assembly Res. 1664 (XVI), U.N. General Assembly, 16th Sess., Official Records, Supp. 17, at 5, U.N. Doc. A/4980/Add. 1 (1961); Department of State, Documents on Disarmament: 1961, at 693.

²⁹ U. S. Proposal Submitted to the Eighteen-Nation Disarmament Committee: Draft Treaty to Prevent the Spread of Nuclear Weapons, Aug. 17, 1965. International Negotiations, note 9 above.

³⁰ U. S. Proposal Submitted to the Eighteen-Nation Disarmament Committee: Amendment to the U. S. Draft Treaty to Prevent the Spread of Nuclear Weapons, March 21, 1966, *ibid.* at 140.

³¹ State Department, Documents on Disarmament: 1965, Soviet Draft Treaty on the Nonproliferation of Nuclear Weapons, Sept. 24, 1965, at 443-446.

trol. The reception of this proposal by our European allies, however, was mixed. Basic problems of ultimate control over such a force seemed to many to be insuperable. And in the United States, the debate over the Pastore Resolution³² commending the President's efforts to negotiate a non-proliferation agreement gave conclusive evidence that the Senate would not amend the Atomic Energy Act³³ (which prohibits the "transfer" of nuclear weapons in foreign commerce) to allow United States nuclear weapons to be transferred to any proposed MLF. With this timely scuttling of the MLF fleet, the major Soviet objection to the United States draft treaty was eliminated.

During the next year intensive private negotiations took place between William Foster, Director of the Arms Control and Disarmament Agency and our representative at Geneva, and Ambassador Roshchin of the U.S.S.R., Co-Chairmen of the ENDC. While frequent consultations occurred between the major parties and their respective allies, and with other members of the ENDC, the negotiations themselves occurred bilaterally rather than within the ENDC.

On August 24, 1967, the United States and the Soviet Union had agreed upon identical texts of a draft treaty and submitted the same, minus a safeguards article, to the ENDC.³⁴ The failure of agreement on a safeguards article came about because of the existence of two international safeguards systems, that of the IAEA and the European Atomic Community (Euratom). It has been United States policy to work towards a "single, worldwide system of safeguards,"³⁵ but Common Market countries feared an abandonment of Euratom and consequently a blow to eventual European unity if the IAEA were to perform all safeguards functions within Common Market countries. The United States was caught between its own goal of a single, world-wide safeguards system, and the desire of its European allies to preserve a rôle for Euratom.

The debate on inspection resulted in strange doctrinal bedfellows. West Germany and other Common Market countries wanted inspection by Euratom to avoid industrial espionage and a possible weakening of European integration; the Soviet Union, which for years had proposed various methods of self-inspection in its disarmament schemes, now, quite understandably if not consistently, opposed Euratom inspection as constituting self-inspection for Common Market countries.³⁶ The U. S. draft treaty of August, 1965,³⁷ provided that states would "cooperate in facilitating the application of International Atomic Energy Agency or equivalent international safeguards on all peaceful nuclear activities."³⁸ There was no Soviet equivalent in its corresponding draft, but they had supported the proposal of East Germany, Poland, and Czechoslovakia to accept IAEA

³² S. Res. 179, 89th Cong., 2d Sess., 112 Cong. Rec. 10802 (1966).

³³ See note 14 above.

³⁴ Department of State, Documents on Disarmament: 1967, at 338-341; 62 A.J.I.L. 308 (1968).

³⁵ See note 1 above, at 6.

³⁷ See note 29 above.

³⁶ See Larson, note 11 above, at 150.

³⁸ *Ibid.*

safeguards on all their peaceful nuclear activities if the Federal Republic of Germany would do the same.³⁹ The Soviet Union regularly attacked the Federal Republic on its rejection of this proposal and on other issues during the negotiating process.⁴⁰

On April 27, Foreign Minister Brandt suggested before the Bundestag the creation of a "control system" by which the IAEA would reach agreement with Euratom on verification procedures by which the former would satisfy itself that the latter was adequately performing the safeguards functions.⁴¹ This suggestion was close to the formula eventually agreed upon.

One striking feature of the negotiation of the treaty was the degree of collaboration between the United States and its European allies throughout the process. The safeguards article reflects that collaboration in a particularly striking way. Prior to the presentation of the first U. S. draft treaty of August, 1965, our NATO allies had been carefully consulted through the North Atlantic Council. This body gave prior assent to the submission of the first draft.⁴² After talks in October, 1966, between President Johnson, Secretary Rusk and Foreign Minister Gromyko, a new draft was submitted to our NATO allies in December. Prior to the negotiations leading to the August, 1967, draft, Mr. Foster made a tour of the European capitals—Bonn, Rome, Brussels, and The Hague—to work out a compromise on a safeguards article. Following intensive negotiations at other capitals and in Washington, D. C., safeguards proposals were presented to the North Atlantic Council. The United States then presented what amounted to a NATO draft to the Soviet Union. The Soviets in turn presented a safeguards draft article based largely upon the NATO draft of April 20, 1967. The Soviet proposal was presented to the North Atlantic Council and to all Alliance members and Euratom. On January 18, 1968, a revised draft treaty containing Article III, the safeguards provision, was presented to the 13th Session of the ENDC. The safeguards provisions had been approved by the North Atlantic Council the preceding November.⁴³

The draft of January 18 included, in addition to the safeguards article, new articles (V, VI, and VII) insuring the benefits of peaceful nuclear explosions to the non-nuclear-weapon states, obliging the nuclear-weapon states to "pursue negotiations in good faith" toward nuclear disarmament, and recognizing the right of states to conclude agreements creating regional nuclear-free zones.⁴⁴

As early in the treaty negotiations as 1966, non-nuclear-weapon states had demanded guarantees from nuclear-weapon states insuring freedom from nuclear intimidation or attack if the non-nuclear-weapon states agreed to the treaty prohibitions. President Johnson and Ambassador Goldberg

³⁹ International Negotiations, note 9 above, at 70.

⁴⁰ *Ibid.* at 57.

⁴² *Ibid.* at 29.

⁴¹ *Ibid.* at 71.

⁴³ *Ibid.*

⁴⁴ Revised Draft Treaty on the Nonproliferation of Nuclear Weapons, Jan. 18, 1968, *ibid.* at 150, 153.

promised that some sort of guarantee would be given.⁴⁵ Premier Kosygin suggested an article in the treaty committing nuclear-weapon states to refrain from use of nuclear weapons against states having no such weapons on their territories.⁴⁶ The wording of this proposal had the usual and obvious purpose of attempting to isolate the Federal Republic of Germany from NATO defense strategy. The U.A.R., Mexico, and Burma backed the Soviet proposal.⁴⁷

India, understandably concerned about a nuclear China, gave notice that it would not sign the treaty unless adequate security guarantees were included. External Affairs Minister Chagla told Parliament that India had a "special problem of security against nuclear attack or nuclear blackmail" and would not sign without adequate assurances by the nuclear Powers.⁴⁸

The United Arab Republic, with the support of Rumania and Switzerland, proposed an amendment incorporating the proposal of the Soviet Union that the nuclear-weapon states undertake "not to use, or threaten to use, nuclear weapons against any non-nuclear-weapon State Party to this Treaty which has no nuclear weapons on its territory."⁴⁹ Canada opposed this thinly-veiled attempt to force nuclear weapons out of Germany and Germany out of NATO. The Canadian proposal called for parallel declarations by the nuclear-weapon states coupled with a United Nations resolution,⁵⁰ which was the solution finally adopted. On March 7, 1968, the Co-Chairmen and the United Kingdom presented to the ENDC a tripartite statement on security assurances in the form of a draft Security Council resolution.⁵¹

On March 11, the Co-Chairmen introduced a joint draft treaty to the ENDC, incorporating suggestions by the United Kingdom and Sweden. The preamble was revised to include reference to the Partial Nuclear Test Ban Treaty clause pledging efforts toward a comprehensive test ban. Article VI was strengthened at Sweden's insistence, broadening the commitments of the nuclear-weapon states to seek nuclear and conventional disarmament agreements.⁵² The ENDC sent its report, with the Tripartite Proposal on Security Assurances and the draft treaty attached, to the Twenty-Second General Assembly and the United Nations Disarmament Commission on April 24.

The draft treaty became the center of a major debate in the General Assembly. On May 1, the United States, the Soviet Union, and 18 other states submitted a resolution endorsing the treaty. Japan, Brazil and India all raised serious objections. Japan was critical of its disproportionate impact upon nuclear-weapon states as contrasted with non-nuclear-weapon states. Security problems were still not sufficiently met. The treaty would only remain effective if substantial progress was quickly made by the nuclear-weapon states toward nuclear disarmament.⁵³ Brazil (later to ab-

⁴⁵ *Ibid.* at 73.

⁴⁷ *Ibid.* at 74.

⁴⁹ *Ibid.* at 89.

⁵¹ *Ibid.* at 112.

⁴⁶ *Ibid.*

⁴⁸ *Ibid.*

⁵⁰ *Ibid.* at 89-90.

⁵² *Ibid.* at 113; 62 A.J.I.L. 817 (1968).

⁵³ International Negotiations, note 9 above, at 118.

stain on the vote on the resolution) criticized the draft treaty on several grounds: first, the development of peaceful nuclear explosive devices was denied the non-nuclear-weapon states; second, no "tangible commitment" to nuclear disarmament had been made by the nuclear-weapon states; third, such states were not obliged to place their peaceful nuclear activities under IAEA safeguards; and finally, the security assurances were inadequate, and formal obligations by the nuclear-weapon states not to use or threaten to use nuclear weapons against non-nuclear-weapon signatory states were indispensable.⁵⁴ India (also later to abstain) announced that it would not sign. Ambassador Husain criticized the treaty for not providing for a cut-off in production of fissionable materials (the prevention of so-called "vertical proliferation") and the absence of any requirement that nuclear-weapon states accept the safeguards provisions of Article III.⁵⁵ India also considered Article VI inadequate; to insure that the nuclear-weapon states understood the link between Article VI and the durability of the treaty, Ambassador Husain stated that his government favored the proposal suggested by Italian Foreign Minister Fanfani on July 29, 1965, that non-nuclear-weapon states would declare a "moratorium" on the acquisition of nuclear weapons for a specified time, to be made a permanent renunciation only if the nuclear-weapon states reached agreement on nuclear weapons disarmament within that time.⁵⁶

The sponsors of the May 1 draft resolution presented a revised draft on May 28, emphasizing the need for sharing the benefits of peaceful nuclear activities and the necessity for quick agreement among the nuclear-weapon states for further negotiations on nuclear disarmament. Twenty additional states joined as co-sponsors of the resolution.⁵⁷ On May 31 the United States and the Soviet Union submitted a final draft treaty meeting some of the objections raised in the General Assembly debate.⁵⁸ On June 12, the General Assembly adopted the revised resolution by a vote of 95 to 4, with 21 abstentions.⁵⁹

The United States, the Soviet Union, and the United Kingdom submitted to the Security Council their proposal for security assurances after the Assembly had approved the resolution commending the treaty to the Member States. France abstained from voting on the ground that the only real security guarantee against nuclear blackmail or aggression lay in nuclear disarmament. India took the same position, and in addition stated its belief that the Security Council had the responsibility to guarantee

⁵⁴ *Ibid.* at 118-119.

⁵⁵ The United States had previously agreed to accept IAEA safeguards upon "all nuclear activities in the United States—excluding only those with direct national security significance." Department of State, Documents on Disarmament: 1967, at 614-615. The United Kingdom subsequently made a similar declaration. The Soviet Union did not.

⁵⁶ See note 39 above, at 19, 119.

⁵⁷ *Ibid.* at 122-123.

⁵⁸ *Ibid.* at 123.

⁵⁹ *Ibid.* at 125. The Soviet Union, the United Kingdom, and the United States all supported the resolution; Albania, Cuba, Tanzania and Zambia voted against it. Brazil, Burma, France, India and Spain were among the 21 countries which abstained.

any state against nuclear attack or blackmail, whether or not the state was party to the treaty. The vote in the Council was 10-0, with 5 abstentions.⁶⁰

The Treaty on the Non-Proliferation of Nuclear Weapons was signed by over 50 countries, including the United States, the Soviet Union, and the United Kingdom, on July 1, 1968, at Moscow, Washington, and London. It will enter into force when instruments of ratification have been submitted by the United States, the Soviet Union, and the United Kingdom, plus 40 other governments.⁶¹

THE TREATY ⁶²

The key articles of the treaty are I and II.⁶³

⁶⁰ *Ibid.* at 127-128. Abstaining were Algeria, Brazil, France, India, and Pakistan.

⁶¹ *Ibid.* at 129.

⁶² Paragraphs one to three of the preamble express the importance of preventing the proliferation of nuclear weapons. Paragraphs four and five state the need of and confidence in the safeguards system of the International Atomic Energy Agency. Paragraphs six and seven declare the goal of sharing peaceful uses of nuclear energy and nuclear explosions for peaceful purposes. The need for further progress toward nuclear disarmament is emphasized in paragraphs eight and nine. The last paragraph of the preamble reaffirms the principles of the United Nations Charter regarding the use of force in international relations:

“Preamble:

“The States concluding this Treaty, hereinafter referred to as the ‘Parties to the Treaty’;

“Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples,

“Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war,

“In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,

“Undertaking to cooperate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities,

“Expressing their support for research, development and other efforts to further the application, within the framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points.

“Affirming the principle that the benefits of peaceful applications of nuclear technology, including any technological by-products which may be derived by nuclear-weapon States from the development of nuclear explosive devices, should be available for peaceful purposes to all Parties to the Treaty, whether nuclear-weapon or non-nuclear-weapon States,

“Convinced that, in furtherance of this principle, all Parties to the Treaty are entitled to participate in the fullest possible exchange of scientific information for, and to contribute alone or in cooperation with other States to, the further development of the applications of atomic energy for peaceful purposes,

“Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament,

“Urging the cooperation of all States in the attainment of this objective,

“Recalling the determination expressed by the Parties to the 1963 Treaty banning

Article I deals with the obligations of nuclear-weapon states.⁶⁴ Such states undertake "not to transfer" nuclear weapons, or control over them, "to any recipient whatsoever." This prohibition includes, of course, transfer by one nuclear-weapon state to another. Second, nuclear-weapon states are obliged to refrain from aiding non-nuclear-weapon states in manufacturing or otherwise obtaining nuclear weapons. Third, these prohibitions apply to nuclear explosive devices designed and intended for peaceful as well as weapons purposes. This is necessary due to the similarity in function and in technology used in the manufacture of nuclear explosives whether for peaceful or weapons purposes.

The complete prohibition on transfer of nuclear explosives would seem to preclude transfer to international organizations such as the IAEA. It has been suggested⁶⁵ that the IAEA could fulfill the injunction of Article V that the peaceful benefits of nuclear explosions be made available to non-nuclear-weapon states on a non-discriminatory basis. While it is likely that the IAEA will have a rôle in establishing international standards for the performance of such services and could in addition perform administrative functions in this area, the IAEA would seem to be precluded from

nuclear weapon tests in the atmosphere in outer space and under water in its Preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end,

"Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a treaty on general and complete disarmament under strict and effective international control,

"Recalling that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources,

"Have agreed as follows:"

⁶³ "ARTICLE I

"Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices."

"ARTICLE II

"Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices."

⁶⁴ "Nuclear-weapon states" are defined as those states which have manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967.

⁶⁵ Note, "The Nonproliferation Treaty and Peaceful Applications of Nuclear Explosions," 20 *Stanford Law Rev.* 1030, 1035-1037 (1968).

actual possession of nuclear explosives insofar as they would be transferred from a nuclear-weapon state.⁶⁶

Article II deals with the obligations of non-nuclear-weapon states. Such states are prohibited from receiving the "transfer" of nuclear weapons or other nuclear explosive devices, or control over them, from any transferor. Second, such states must not manufacture nuclear weapons or other nuclear explosive devices or receive any assistance in manufacturing such weapons or devices.

Articles I and II prohibit transfer "or control" over nuclear explosive devices. The meaning of "control" or "access," the term preferred by the Soviet Union, was the cause of a five-year deadlock before final agreement was reached between the Soviet Union and the United States, according to Mason Willrich, a former member of the United States Delegation to the ENDC.⁶⁷ The issue behind the semantics was the potential rôle of West Germany in NATO. The Soviets were adamant on the question of no "access" by West Germany to nuclear weapons, through MLF or any other institution. The United States was equally firm regarding NATO control, unhindered by any non-proliferation agreement, on planning for nuclear defense. United States custody of nuclear weapons and release arrangements could not be interpreted to violate any agreement until an actual release had been accomplished. The Soviets finally agreed to wording permitting a continuation of NATO planning and participation based on the status quo. This would require no change in United States or West German participation in NATO but would preclude the creation of a Multilateral Force.⁶⁸

⁶⁶ A nuclear-weapon state would be prohibited by Art. I from transferring nuclear explosive devices to the IAEA, since the language of Art. I, unlike Art. II, precludes transfer "to any recipient whatsoever," without regard for a status of statehood or treaty membership.

⁶⁷ Willrich, "The Treaty on Non-Proliferation of Nuclear Weapons: Nuclear Technology Confronts World Politics," 77 Yale Law J. 1447, 1465 (1968). See also Willrich, *Non-Proliferation Treaty: Framework for Nuclear Arms Control* (1969).

⁶⁸ Secretary Rusk, testifying before the Senate Foreign Relations Committee: "The treaty deals only with what is prohibited, not with what is permitted. It prohibits transfer to any recipient whatsoever of nuclear weapons or control over them, meaning bombs and warheads. It also prohibits the transfer of other nuclear explosive devices, because a nuclear explosive device intended for peaceful purposes can be used as a weapon or can be easily adapted for such use. It does not deal with, and therefore does not prohibit, transfer of nuclear delivery vehicles or delivery systems, or control over them to any recipient, so long as such transfer does not involve bombs or warheads. It does not deal with allied consultations and planning on nuclear defense so long as no transfer of nuclear weapons or control over them results. It does not deal with arrangements for deployment of nuclear weapons within allied territory as these do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling. And, it does not deal with the problem of European unity, and would not bar succession by a new federated European state to the nuclear status of one of its former components. A new federated European state would have to control all of its external security functions, including defense and all foreign policy matters relating to external security, but would not have to be so centralized as to assume all governmental func-

However, while a Multilateral Force is not permitted under the treaty, an interpretation has been made by the United States, distinguishing between "transfer," the key word of Articles I and II, and "succession." The former is prohibited, while the latter, which could involve an integrated European state emerging from several now in existence, is not.⁶⁹

"Nuclear weapons" are defined to include nuclear warheads for missiles, or nuclear bombs. This term has not been interpreted to include non-nuclear explosive devices which may become part of nuclear explosive devices, such as delivery systems, or nuclear power reactors in Polaris submarines. The Nassau agreement, whereby the United States makes available Polaris missiles without warheads to the United Kingdom, is thus not affected by the treaty.⁷⁰

Article III⁷¹ contains the safeguards provisions. Its purpose is to verify

tions. While not dealing with succession by such a federated state, the treaty would bar transfer of nuclear weapons (including ownership) or control over them to any recipient, including a multilateral entity." See Hearings on the Treaty on the Non-proliferation of Nuclear Weapons, note 1 above, at 5-6.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ "ARTICLE III

"1. Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfillment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

"2. Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this article.

"3. The safeguards required by this article shall be implemented in a manner designed to comply with Article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this article and the principle of safeguarding set forth in the Preamble of the Treaty.

"4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations."

compliance with treaty provisions that nuclear materials used for peaceful purposes by non-nuclear-weapon states not be diverted to nuclear weaponry.

Non-nuclear-weapon states agree to accept safeguards upon source or special fissionable material "in all peaceful nuclear activities, within the territory" of the state, "under its jurisdiction, or carried out under its control anywhere." These safeguards are applied for the sole purpose of verification of compliance with treaty obligations. The safeguards are to be set forth in agreements to be "negotiated and concluded" with the IAEA in accordance with its Statute and safeguards system.

Paragraph two of Article III prohibits the parties from providing source or special fissionable material, or equipment or material for processing, use or production of special fissionable material to any non-nuclear-weapon state for peaceful purposes, unless subject to safeguards.

Paragraph three of Article III insures that safeguards will not unduly hamper the peaceful development of nuclear power by non-nuclear-weapon states in accordance with Article IV.

Paragraph four prescribes the manner in which safeguards agreements are to be concluded. Non-nuclear-weapon states may conclude such agreements individually or multilaterally (*i.e.*, Euratom) in accordance with the Statute of the IAEA. Negotiations on agreements are to commence within 180 days after the treaty's entry into force and be concluded within 18 months after the initiation of negotiations.

The safeguards system of the treaty is not designed to insure compliance with the provisions of Articles I and II relating to non-transfer and reception of nuclear weapons.⁷² Nor will it detect a clandestine weapons production system apart from non-nuclear-weapon states' programs of peaceful uses of nuclear energy. Further, the safeguards system is not applicable by treaty provision to peaceful nuclear activity within nuclear-weapon states. What the safeguards are designed to accomplish is the verification of compliance with treaty prohibitions against diversion of fissionable material from peaceful nuclear programs to nuclear weapons programs or other nuclear explosives programs within non-nuclear-weapon states.

Though limitations exist regarding the scope of the safeguards provisions of the treaty, they will still have profound effect upon the non-nuclear-weapon states. Since safeguards are applied "on all source or special fissionable material in all peaceful nuclear activities" within the territory or under the jurisdiction or control of such states, the entire peaceful nuclear industry of the non-nuclear-weapon states will be covered.

Throughout the negotiating period many non-nuclear-weapon states were critical of the proposed safeguards provisions as being discriminatory, since only the non-nuclear-weapon states were to be affected by the safeguards provisions. Sweden, Canada, Rumania, Brazil, India, the Federal Republic of Germany and Spain made especial objections upon this point.⁷³

While Article III does not require the application of safeguards to the

⁷² See Willrich, 77 Yale Law J., note 67 above, at 1447-1480.

⁷³ International Negotiations, note 9 above, at 101.

peaceful nuclear activities of nuclear-weapon states, on December 2, 1967, President Johnson announced that the United States would accept IAEA safeguards upon "all nuclear activities in the United States—excluding only those with direct national security significance."⁷⁴ The United Kingdom announced two days later that it would do the same.⁷⁵ The U.S.S.R. has made no similar commitment.

With the voluntary placement of the peaceful nuclear industry of the United States and the United Kingdom under the IAEA safeguards system, together with the application of that system to the peaceful nuclear industries of all non-nuclear-weapon states parties to the treaty, a giant step will have been taken toward the creation of a body of international law governing the conduct of the world peaceful nuclear industry. This must be recognized as a major beneficial result of the treaty. One major purpose in United States sponsorship of the IAEA at its beginning was to effect this very purpose.⁷⁶ In large measure, the safeguards system of the IAEA was based upon the safeguards provisions of United States bilateral agreements with states receiving our aid in developing their peaceful nuclear industries.⁷⁷ Now this goal of world-wide recognition and application of standardized international regulations to the peaceful nuclear industries of the world is within reach. That this is absolutely essential if nuclear anarchy is to be avoided is seen from the fact that total nuclear generating capacity by 1980 is estimated to be 300,000 megawatts. As of 1967, only 65 reactors in 29 countries having a total thermal capacity of 3,200 megawatts, had safeguards agreements approved by the Board of Governors of the IAEA.⁷⁸ This represented less than 8% of the thermal capacity of civilian reactors then operating.

The IAEA safeguards system⁷⁹ includes an intricate system of accounting and inventory reporting by the recipient state to the IAEA, coupled with IAEA access to specified locations where nuclear facilities exist to permit physical verification of the reports.⁸⁰ The frequency of inspections is determined by the potential military significance of the facility. If the reactor is capable of producing more than 60 kilograms of plutonium per year it is open to inspection by the Agency without advance notice.⁸¹ The IAEA safeguards system includes a review of the design facility, disclosure of accounting records, a system of reports to the Agency, physical

⁷⁴ Department of State, Documents on Disarmament: 1967, at 614–615; for a comment on this matter, see Hearings on the Treaty on the Nonproliferation of Nuclear Weapons, note 1 above, at 11.

⁷⁵ Department of State, Documents on Disarmament: 1967, at 616.

⁷⁶ See Firmage, note 11 above, at 152–154. ⁷⁷ *Ibid.*

⁷⁸ Statement by the Director-General, IAEA, Sept. 26, 1967, to the General Conference.

⁷⁹ For the Safeguards Document, see IAEA, GC(IX)/294 (1965). For an analysis of the background and content of both the IAEA and United States safeguards systems, see the statement of Dr. Glenn T. Seaborg, Chairman of the Atomic Energy Commission, in the Hearings on the Treaty on the Nonproliferation of Nuclear Weapons, note 1 above, at 97, 99–105. See also "Analysis of IAEA Safeguards System," *ibid.* at 277.

⁸⁰ *Ibid.*

⁸¹ IAEA, GC(IX)/294 (1965), Annex, par. 57.

inspection for verification, provision for numbers of physical inspections, and seals upon the core of the reactor to detect diversion.

The relationship between the IAEA and Euratom caused some delay in negotiation and debate between the United States, the Soviet Union, and the four Common Market countries participating in the negotiations.⁸² The United States has always favored a single system of safeguards. However, the Common Market countries feared that the elimination of Euratom with its similar safeguards system would do damage to eventual European integration. The Soviets viewed Euratom inspection as self-inspection for the Common Market countries. The issue was resolved by allowing member states of Euratom to utilize the option in Article III providing for agreement to be made with IAEA "together with other States in accordance with the Statute" of the IAEA. The Statute provides for "relationship agreements" between the IAEA and organizations such as Euratom which provide the same services regarding safeguards provisions as the IAEA. However, to meet the Soviet objections, provision was made in Article III that any agreement between a state or groups of states must allow the IAEA in effect to monitor the Euratom safeguards, which must also be in harmony with the IAEA Statute and safeguards system. The IAEA-Euratom relationship, while yet to be worked out in detail, was described by the United States at the ENDC:

In order to avoid unnecessary duplication, the IAEA should make appropriate use of existing records and safeguards, provided that under such mutually-agreed arrangements IAEA can satisfy itself that nuclear material is not diverted to nuclear weapons or other nuclear explosive devices.⁸³

Article IV⁸⁴ insures that nothing in the treaty shall be interpreted as affecting the right of all parties to use nuclear energy for peaceful pur-

⁸² See analysis above, at p. 717. See also the remarks of William Foster, Director, U. S. Arms Control and Disarmament Agency and our representative at ENDC, in International Negotiation, note 9 above, at 70-73, 81-82, 101-103.

⁸³ Statement of ACDA Deputy Director, Adrian Fisher, Jan. 18, 1968, ENDC/PV.357, at 14, 17. See also Mr. Fisher's testimony, Hearings on the Arms Control and Disarmament Act Amendments, note 4 above, at 61-62. In addition, see "AEC Comparison of Euratom safeguard system and the IAEA System," Hearings on the Treaty on the Nonproliferation of Nuclear Weapons, note 1 above, at 266.

⁸⁴ "ARTICLE IV:

"1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.

"2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world."

poses, within the limitations of Articles I and II. Nuclear-weapon states are encouraged to aid the development of peaceful applications of nuclear energy within non-nuclear-weapon states parties to the treaty, with "due consideration" for the needs of developing areas.

In previous drafts the hortatory language of Article IV was in the preamble. This article is too general to impose specific duties upon the nuclear-weapon states. During the ENDC discussions on the draft of August 24, 1967, Mexico, along with the United Arab Republic and Sweden, favored a provision in the treaty imposing a "duty" upon the nuclear-weapon states to aid non-nuclear-weapon states in the development of peaceful applications of nuclear energy.⁸⁵ Canada and the United Kingdom argued that the term "duty" was too broad and could be interpreted to mean that a nuclear-weapon state would be forced to respond to any request by any non-nuclear-weapon state.⁸⁶ The new Article IV which appeared in the January 18, 1968, draft represented a degree of compromise, as the language remained hortatory, but was made slightly more concrete and was moved from the preamble to the body of the treaty.⁸⁷

Article V⁸⁸ provides that the benefits of peaceful nuclear explosive devices be made available on a non-discriminatory basis and at the lowest

⁸⁵ Department of State, Documents on Disarmament: 1967, at 394-395.

⁸⁶ International Negotiations, note 9 above, at 83.

⁸⁷ For a short description of present and possible future peaceful uses of nuclear energy and nuclear explosions, see the speech by former Secretary of State Dean Rusk, Fordham University Club of Washington, D. C., May 2, 1968, "Gaining the Full Measure of the Benefits of the Atom," reprinted in 58 Dept. of State Bulletin 632 (1968).

There has not been the development of peaceful uses of nuclear energy within the underdeveloped areas that such nations expected after President Eisenhower's "Atoms for Peace" speech. The sound concept of peaceful applications of nuclear energy was oversold to the extent that developing nations thought that they could be brought into the industrial 20th century without going through the stages of industrialization that Western nations have experienced. The realization that a significant industrial base must first be had before meaningful uses of atomic energy could be enjoyed has produced understandable disillusion and hostility. However, genuine attempts to aid the developing nations in their application of nuclear energy for peaceful purposes are being made. From 1958 to 1963 the ratio of research contract funds granted by the IAEA to institutes in developing countries rose from 23% to 65%. In 1966, 75% of all research contract funds of the Agency were awarded for research in developing countries. IAEA, GC(XI)/362 (1967) Annex B, par. 19.

⁸⁸ "ARTICLE V

"Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements."

possible cost, without charge for research and development, to non-nuclear-weapon states parties to the treaty. Non-nuclear-weapon states are precluded by Article II from receiving or manufacturing nuclear explosive devices for peaceful as well as for weapons purposes. Article V is a necessary consequence of that denial, making available to the non-nuclear-weapon states parties to the treaty the benefit of nuclear explosions for peaceful purposes. Explosions are to take place under appropriate international observation. Non-nuclear-weapon states can obtain such services pursuant to international agreement, through an international organization or by bilateral agreement with a nuclear-weapon state.

Like Article IV, the general purpose of Article V was expressed in the preamble in early drafts of the treaty but found its way into the body at the insistence of non-nuclear-weapon states.

The United States proposed in 1966 that the nuclear-weapon states perform peaceful nuclear explosive services for the non-nuclear-weapon states.⁸⁹ The prohibition in Article II on reception, manufacture or use of nuclear explosive devices for peaceful as well as weapons purposes was considered necessary due to the similarity in technology employed in the manufacture of nuclear explosives for either purpose. Immediate opposition to this prohibition quite understandably arose, however, on the part of several non-nuclear-weapon states, including India,⁹⁰ Germany,⁹¹ and the United Arab Republic.⁹²

The United States and the Soviet Union had originally favored an agreement separate from the treaty to work out problems of nuclear explosions for peaceful purposes.⁹³ The only reference in the August 24, 1967, draft⁹⁴ to insuring that the benefits of peaceful nuclear explosive devices be made available to non-nuclear-weapon states was in the preamble. Though Brazil and India registered strong opposition to any prohibitions against the possession and use of nuclear explosive devices for peaceful purposes,⁹⁵ the Co-Chairmen of the ENDC, the United States⁹⁶ and the Soviet Union,⁹⁷ maintained that such a prohibition must exist if the treaty were effectively to prohibit the spread of nuclear weapons. While most delegates agreed with the Co-Chairmen, there was strong feeling that there should be treaty specification of means of sharing the benefits of devices for peaceful nuclear explosions. Mexico⁹⁸ and Nigeria⁹⁹ made specific proposals for such a provision.

The revised draft treaty of January 18, 1968,¹⁰⁰ reflected the criticism of ENDC members in that a new Article V brought into the body of the

⁸⁹ International Negotiations, note 9 above, at 63.

⁹⁰ *Ibid.* at 58.

⁹¹ *Ibid.* at 63-65.

⁹² *Ibid.* at 67.

⁹³ Department of State, Documents on Disarmament: 1967, at 172-176.

⁹⁴ *Ibid.* at 338-341.

⁹⁵ *Ibid.* at 369-370, 546-547, 436-437.

⁹⁶ See statement of ACDA Director Foster, ENDC/PV.330, p. 5.

⁹⁷ Department of State, Documents on Disarmament: 1967, Statement of Ambassador Roshchin, 518.

⁹⁸ *Ibid.* at 395-401.

⁹⁹ *Ibid.* at 557-558.

¹⁰⁰ See International Negotiations, note 9 above, at 150.

treaty language which had previously been in the preamble. Each party was obligated to co-operate in insuring that potential benefits from peaceful nuclear explosive devices be made available to non-nuclear-weapon parties on a non-discriminatory basis without expense for the cost of research and development.¹⁰¹

The draft treaty of January, 1968, permitted bilateral arrangements for the accomplishment of peaceful nuclear explosive services directly between non-nuclear-weapon and nuclear-weapon states, as well as permitting multilateral arrangements. Several states opposed this permission of bilateral arrangements for such services on the grounds that clandestine and perhaps discriminatory agreements could be made if all nuclear explosive services were not subject to international control. Canada,¹⁰² Sweden¹⁰³ and the U.A.R.¹⁰⁴ were in agreement with this objection. The United States and the Soviet Union refused to consider the elimination of any provision for bilateral arrangements. However, Article V was revised in the draft treaty of May 31, 1968,¹⁰⁵ to incorporate a Mexican proposal that precedence in placement of wording be given to multilateral arrangements for peaceful applications for nuclear explosions, as opposed to bilateral arrangements, which was grudgingly accepted by several smaller Powers which satisfied their frustration at being unable to eliminate the bilateral option by placing it last in wording.¹⁰⁶ Non-nuclear-weapon states favoring exclusively multilateral arrangements for the acquisition of nuclear explosive services have the assurance in the treaty that such benefits will be made available,

¹⁰¹ The U. S. negotiating team was motivated by an understandable desire to avoid any specific and open-ended commitment to provide nuclear explosive services upon demand and the technological necessity of forbidding any nuclear explosive device to non-nuclear-weapon states. The position of such states as India and Brazil against any provision prohibiting peaceful nuclear explosive devices is equally understandable. Both states continually maintained that such a provision would render non-nuclear-weapon states perpetually dependent upon nuclear-weapon states for the performance of nuclear explosions for peaceful purposes. The extent of this dilemma can be seen by comparing the statements made by the representatives of Brazil and India, which continued unchanged by the decision to make provision for such services a part of the treaty (see International Negotiations, note 9 above, at 104), with the following statement from the Senate Foreign Relations Committee Report recommending Senate consent to ratification:

"The committee wishes to record its concern at the open ended commitment implied in Article V. We suggest that obligations under this provision should be undertaken only after the fullest consultation with appropriate congressional committees and should be limited to projects within the capacity of the United States consistent with its interests. Moreover, the committee specifically reject any suggestion that article V constitutes an across-the-board pledge by the United States to support foreign and domestic commercial research and development projects. As in the case of nuclear services projects, research and development projects should be undertaken only after the public interest has been carefully defined by the appropriate congressional committees." Treaty on the Non-Proliferation of Nuclear Weapons, Senate Rep. No. 9, 90th Cong., 2d Sess. 14 (1968).

¹⁰² ENDC/PV.358, at 19-20.

¹⁰³ ENDC/PV.364, at 5-7.

¹⁰⁴ ENDC/PV.367, at 12.

¹⁰⁵ See International Negotiations, note 9 above, at 120, 122.

¹⁰⁶ *Ibid.* at 123-124.

whether by bilateral agreement with a nuclear-weapon state or by agreement with an international organization, "under appropriate international observation and through appropriate international procedures."¹⁰⁷

While opinions vary on the extent of sacrifice made by non-nuclear-weapon states in agreeing to forgo the development of nuclear explosive devices for peaceful purposes,¹⁰⁸ as new uses for nuclear explosions are discovered and techniques are improved on present uses with a consequent lowering of costs, more nations will feel the pressure for the full realization of such benefits. Article V must work well or this source of pressure could lead to the eventual breakdown of the treaty. As has been noted, Brazil was one of several countries strongly opposing the provisions of Article II (and hence the necessity of Article V) prohibiting non-nuclear-weapon countries from possessing nuclear explosive devices for peaceful purposes. Brazil has shown considerable interest in linking the Amazon and the Rio de la Plata by use of nuclear explosives.¹⁰⁹ Brazil was largely responsible for the inclusion of a provision in the Latin American Nuclear Free Zone (LANFZ) Treaty¹¹⁰ permitting parties to carry out explosions of nuclear devices for peaceful purposes.¹¹¹

¹⁰⁷ See note 88 above. The general outlines of U. S. planning for providing such services were presented by Dr. Glenn T. Seaborg, Chairman of the Atomic Energy Commission, before the Senate Foreign Relations Committee:

"When particular applications are found to be feasible, we plan to make a nuclear explosion service available on a commercial basis to domestic users and to nonnuclear weapon parties to the NPT. Such a service would include the fabrication of the nuclear explosive device, its transportation from the assembly plant to the project site, its emplacement at the prepared site, and its arming and firing. The service would also include appropriate technical reviews of the proposed detonation, such as those relating to health and safety. The users of the service, whether it is furnished domestically or pursuant to article V, will pay for the service in accordance with rates established for its various elements. . . . the charges for the nuclear explosive devices used in furnishing the service will not include the cost of their research and development.

" . . . The objectives of the treaty could not permit any observation contemplated by the treaty to include access by the observers to the design or internal operation of nuclear explosive devices. Consequently, there will be no transfer of nuclear explosive devices or control over them; nor will the service, in any way, assist, encourage, or induce any nonnuclear weapon state to manufacture or to otherwise acquire nuclear explosive devices." Hearings on the Treaty on the Nonproliferation of Nuclear Weapons, note 1 above, at 104.

¹⁰⁸ Speech by Under Secretary of State Nicholas Katzenbach, note 5 above: "Even an optimistic assessment of its potential uses would not justify the enormous expenditure of time, money and scientific and technical talent required to develop nuclear devices for this purpose alone."

He later spoke of the "economic absurdity of a country's developing nuclear explosives solely for peaceful purposes"

¹⁰⁹ Koop, "Plowshare and the Nonproliferation Treaty," 12 *Orbis* 793, 809 (1968).

¹¹⁰ See note 23 above.

¹¹¹ Art. 18 of LANFZ states that: "Contracting parties may carry out explosions of nuclear devices for peaceful purposes—including explosions which involve devices similar to those used in nuclear weapons—or collaborate with third parties for the same purpose."

Many other states, including Japan, Australia, and Canada, have expressed deep interest in this use of nuclear energy. While oil and gas recovery is probably the most realistic short-term prospect for peaceful uses of nuclear explosions, many other possibilities are now being tested by the United States Plowshare program.¹¹² From the use of nuclear explosives in the construction of a sea-level Atlantic-Pacific canal replacing the Panama Canal¹¹³ to the use of nuclear explosions to break copper ore bodies to permit direct recovery of copper,¹¹⁴ nations will continue to explore the peaceful uses of nuclear explosions. Nuclear-weapon states, and whatever international body (presumably the IAEA) is utilized to perform functions under Article V, have the responsibility to see that its provisions are fairly and adequately met if for no other reason than the likelihood that the failure to do so could lead to the ultimate failure of the treaty.

The single most important provision of the treaty, however, from the standpoint of long-term success or failure of its goal of proliferation prevention, is Article VI.¹¹⁵ While the basic prophylactic provisions are in Articles I and II, the credibility and integrity of those provisions will, in time, be no better than the performance of the nuclear-weapon states under the provisions of Article VI.

Article VI obliges all parties to undertake negotiations to seek the cessation of the nuclear arms race and accomplish nuclear disarmament.

The compelling need for compliance with this provision is based first of all upon its pre-eminent status as a prerequisite to world peace. Whatever the validity in the past of the argument that weapons are a manifestation rather than a cause of war, that position holds little weight in an age of weapons of total destruction. John F. Kennedy recognized this fact.

Men no longer debate whether armaments are a symptom or a cause of tension. The mere existence of modern weapons—ten million times more destructive than anything the world has ever known, and only minutes away from any target on earth—is a source of horror, of discord, and distrust. Men no longer maintain that disarmament must

¹¹² For analyses of Project Plowshare, see Hearing on the Peaceful Application of Nuclear Explosives—Plowshare Before the Joint Committee on Atomic Energy, 89th Cong., 1st Sess. (1965); Inglis and Sandler, A Special Report on Plowshare, Prospects and Problems: The Nonmilitary Uses of Nuclear Explosives, *Bulletin of Atomic Scientists* 46-53 (Dec., 1967); Koop, note 109 above; Van Cleave, "The Nonproliferation Treaty and Fission-Free Explosive Research," 11 *Orbis* 1055 (1968); Note, "The Nonproliferation Treaty and Peaceful Applications of Nuclear Explosions," note 65 above.

¹¹³ This would necessitate an amendment to the Partial Nuclear Test Ban Treaty. Dr. Seaborg stated that provisions of the Partial Nuclear Test Ban Treaty would permit excavation-type projects but trans-isthmian canal projects would necessitate treaty amendment. See note 107 above, at 105.

¹¹⁴ Koop, note 109 above, at 801.

¹¹⁵ "ARTICLE VI

"Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."

await the settlement of all disputes—for disarmament must be a part of any permanent settlement.¹¹⁶

Second, the economic burden of armaments is increasing at a time when the domestic economic needs of nations are becoming increasingly acute. Global expenditures for military purposes rose from \$132 billion in 1964, \$138 billion in 1965, and \$159 billion in 1966, to \$182 billion in 1967.¹¹⁷ This is 40% more than world-wide expenditures by governments on education,¹¹⁸ and three times the world expenditures on public health.¹¹⁹ It is estimated that since the turn of the century more than \$4,000 billion have been spent on wars and military expenditures. If the *current level* of military spending continues, this will double in 20 years. If the *rate of increase* continues, it will double in ten years.¹²⁰

Military expenditures are increasing in relative as well as in absolute terms. Such expenditures are increasing faster than the gross national products of the world,¹²¹ and are growing significantly faster than the population. Since 1964 the world has experienced a 7% increase in population and a 38% rise in military expenditures.¹²²

The third and most immediately relevant necessity for compliance with Article VI, in terms of the treaty, would be the pressures upon, and consequently the reactions of, the non-nuclear-weapon party states. The nuclear-weapon states cannot ask of the non-nuclear-weapon states their eternal forbearance from the acquisition of nuclear weapons while the former maintain their position of immense power over the latter by reason of such weapons. The treaty will have continued adherence only if negotiations bring meaningful agreements to end the nuclear arms race and some movement toward nuclear disarmament.¹²³

The fact that Article VI has its place in the treaty is a testament to the tenacity of the non-nuclear-weapon states in demanding some form of quid pro quo for their renunciation of the acquisition of nuclear weapons. Prior to the draft of August 24, 1967, India, Brazil, the Scandinavian countries, Canada, the U.A.R. and Germany brought strong pressure to bear upon the Co-Chairmen to obtain some statement within the treaty regarding nuclear disarmament.¹²⁴ The United States and the Soviet Union resisted with equal tenacity the attempts to link the treaty to other aspects of arms control. The Co-Chairmen stated the positions of their states, based on years of unproductive disarmament negotiations upon package proposals which included the concept of “complete” disarmament, that the present draft

¹¹⁶ Public Papers of the Presidents of the United States—John F. Kennedy, 1961–62, Address Before the United Nations General Assembly, Sept. 25, 1961, at 620.

¹¹⁷ United States Arms Control and Disarmament Agency, World Military Expenditures, Research Report 68–52, at 1 (1968).

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.* at 2.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ See the statements of Lord Chalfont of the United Kingdom and General Burns of Canada at the ENDC, ENDC/PV, 299, at 7–8, 16.

¹²⁴ International Negotiations, note 9 above, at 74–75.

represented the extent of possible agreement at that time and should not be delayed pending agreement upon other matters.¹²⁵ The three aspects of nuclear disarmament mentioned most often by the non-nuclear-weapon states were an agreement ending the production of fissionable materials (in nuclear parlance, the "cut-off"), a comprehensive test ban agreement, and an agreement halting the production of delivery systems.¹²⁶

The draft of August 24, 1967, represented a moderate advance for the cause of the non-nuclear-weapon states in that its preamble called for the achievement of a "cessation of the nuclear arms race" at the "earliest possible date."¹²⁷ But most ENDC members thought that this concept should be made more specific and be lodged in the body of the treaty. Brazil called the August draft "one-sided and discriminatory" for its great demands upon non-nuclear-weapon states and minimal demands upon nuclear-weapon states.¹²⁸ Mexico proposed an amendment in the form of a draft treaty article stating that nuclear-weapon states agreed to "pursue negotiations in good faith" toward agreements on a comprehensive test ban, the cessation of the manufacture of nuclear weapons, the elimination of existing stockpiles, and the elimination of existing nuclear weapons and delivery systems.¹²⁹ The U.A.R., Canada and Sweden supported this amendment. Rumania proposed a similar amendment.¹³⁰

The draft of January 18, 1968, represented another advance for the non-nuclear-weapon states. New Articles VI and VII were added to the body of the treaty, with the general language being taken from the preamble, made more specific and added to the treaty as separate articles. Article VI obliges the parties to "pursue negotiations in good faith" toward an agreement ending the nuclear arms race and the accomplishment of a treaty on "general and complete disarmament."¹³¹ This article was based upon the Mexican amendment but deleted the specific topics of disarmament called for in that amendment. Mrs. Myrdal of Sweden proposed that Article VI be amended to include "at an early date" in reference to future disarmament negotiations, that the word "nuclear" be added before "disarmament" and that a reference to the comprehensive test ban be included in the preamble. The United Kingdom, Sweden, Mexico, the U.A.R., Nigeria, Bulgaria and Canada supported this proposal as amended by the United Kingdom.¹³² This was accepted by the United States and the Soviet Union¹³³ and became part of the joint draft treaty of March 11, 1968.¹³⁴

As the United States and the Soviet Union make policy decisions regarding the implementation of Article VI, serious consideration should be given

¹²⁵ *Ibid.*

¹²⁶ *Ibid.* at 75-76, 106.

¹²⁷ See the identical drafts of the United States and the Soviet Union, ENDC/192 and ENDC/193. International Negotiations, note 9 above, at 146. See also 62 A.J.I.L. 308 (1968).

¹²⁸ International Negotiations, note 9 above, at 86.

¹²⁹ Department of State, Documents on Disarmament: 1967, at 395-401.

¹³⁰ 17 Congressional Quarterly 303 (Feb. 28, 1969).

¹³¹ International Negotiations, note 9 above, at 150, 153.

¹³² *Ibid.* at 106.

¹³³ *Ibid.* at 107.

¹³⁴ *Ibid.* at 155-158.

to that topic which generated the most heated exchanges between the Co-Chairmen of the ENDC and three of its most outspoken members, Brazil, India, and Rumania. These exchanges occurred over the long-standing issue of the failure of the draft treaty to halt so-called "vertical proliferation," the growth of fissionable materials stockpiles of the nuclear-weapon states. The United States and the Soviet Union warned that any attempt specifically to link the issue of a cut-off of fissionable production to the Non-Proliferation Treaty would indefinitely delay the latter. India and the other states restated their position that the treaty would break down without movement toward a cut-off. The position of both sides is rational and not incompatible as long as immediate progress is now made toward the implementation of Article VI.

Serious movement by the Soviets and the United States toward the implementation of the purpose of Article VI, even prior to the ratification of the treaty by enough states to bring it into effect, will probably be of critical effect upon the decisions of key states such as India, Japan and Germany on the question of ratification.

The Soviet Union and the United States must realize that the non-nuclear-weapon states cannot be placated by anything similar to the partially ceremonial "first steps" of the past, denuclearizing Antarctica, the atmosphere, outer space and under sea, while "vertical" proliferation goes unchecked and basic political agreements concerning central Europe, the U.S.S.R. and the United States are delayed. The messages to the ENDC from President Nixon and Soviet Premier Kosygin, March 18, 1969, regarding an agreement barring nuclear and other weapons of mass destruction from the seabed, while of some substance, cannot be taken as a meaningful contribution to the fulfillment of Article VI. At some point "first steps" of peripheral importance must lead to agreements of substance. If not, they are potentially more damaging than helpful in that they give the illusion of progress and allay pressures which might otherwise lead to real accomplishment. The place to begin now might well be the negotiation of an agreement on the cut-off of fissionable materials production and the eventual reduction of existing stockpiles.

Another substantial contribution to the fulfillment of Article VI would be an agreement between the Soviet Union and the United States to prohibit the deployment of anti-ballistic missile systems. Questions were raised by Senators Gore, Fulbright and Cooper in hearings before the Senate Foreign Relations Committee on the proposed United States ABM system as to whether such a system "violated the spirit" of Article VI.¹³⁵ The contrary may very well be true. It is reported that President Nixon has assured Ambassador Dobrynin that the United States is willing to negotiate on an ABM limitation which could be effective well before any hardware could be placed in Montana or North Dakota.¹³⁶ If the option of negotiating out of the deployment of ABM systems by the Soviet Union

¹³⁵ 17 Congressional Quarterly (No. 9) at 303 (Feb. 28, 1969).

¹³⁶ James Reston, New York Times, p. 40 M, cols. 5-8 (March 19, 1969).

and the United States was a serious motivation behind the recent decision to deploy such a system, the United States might well be proceeding toward the implementation of Article VI by the most productive form of negotiations.

Though many might consider the decision to proceed toward deployment of an ABM system as an obstacle to negotiation with the Soviet Union, in the opinion of this writer the opposite conclusion is more likely to be correct. This is not to say that the actual deployment of such a system is militarily or politically wise or unwise, workable or unworkable. But as a process of negotiation it might be essential.

Sir William Hayter, formerly British Ambassador to the Soviet Union, described the process of negotiation with the Soviets:

Negotiation with the Russians does occur, from time to time, but it requires no particular skill. The Russians are not to be persuaded by eloquence or convinced by reasoned arguments. They rely on what Stalin used to call the proper basis of international policy, the calculation of forces. So no case, however skillfully deployed, however clearly demonstrated as irrefutable, will move them from doing what they have previously decided to do; the only way of changing their purpose is to demonstrate that they have no advantageous alternative. . . .¹³⁷

The Soviets, when faced with the visible and physical evidence that we intend to proceed with the development and deployment of an ABM system, may well be more amenable to negotiation than if we were to make it known that we had made a unilateral decision to avoid such a system. The notion that our decision will be taken as an unfriendly act with their consequent refusal to bargain is contrary to past experience.¹³⁸ The environment for negotiating with the Soviet Union will be set when both sides are convinced that neither has anything to gain by the deployment of such a system, because both will possess them, thus serving only to

¹³⁷ As quoted in Acheson, *Sketches From Life of Men I Have Known* 105 (1961).

¹³⁸ "Historically, the foreign affairs of Russia have developed along lines entirely different from those of the United States. Our most important foreign relations, historically speaking, have been along the lines of peaceable overseas trade. These have set the pattern of our thinking on foreign affairs. The Russians, throughout their history, have dealt principally with fierce hostile neighbors. Lacking natural geographical barriers, they have had to develop, in order to deal with these neighbors, a peculiar technique (now become traditional and almost automatic) of elastic advance and retreat, of defense in depth, of secretiveness, of wariness, of deceit. Their history has known many armistices between hostile forces; but it has never known an example of the permanent peaceful coexistence of two neighboring states with established borders accepted without question by both peoples. The Russians therefore have no conception of permanent friendly relations between states. For them, all foreigners are potential enemies. The technique of Russian diplomacy, like that of the Oriental in general, is concentrated on impressing an adversary with the terrifying strength of Russian power, while keeping him uncertain and confused as to the exact channels and means of its application and thus inducing him to treat all Russian wishes and views with particular respect and consideration. It has nothing to do with the cultivation of friendly relations as we conceive them." G. Kennan, *Memoirs: 1925-1950* at 560 (1967).

escalate potential warfare to a higher level while leaving the relative positions of the two principals unchanged. Dean Acheson has stated that:

Negotiation should not be, as some conceive it, mere talk apart from action. Negotiation and action are parts of one whole. Action is often the best form of negotiation. It affects the environment, which in large part is likely to determine the outcome of negotiation. The sputniks were powerful moves in negotiation; so was the Marshall Plan.¹³⁹

The Soviets are more likely to be impressed by imminent deployment than by skillful debate or friendly gestures.

The wisdom of ultimate deployment of an ABM system may well be disputed. The ability of such a system to offer real protection to missile sites or cities may be questioned. But the decision to move toward the deployment of such a system may well have made the ultimate necessity of such deployment less likely. The answer to this will depend upon the initiation and the success of negotiations between the Soviet Union and the United States.¹⁴⁰

Another major step toward nuclear arms control would be accomplished by an agreement prohibiting (or reversing) deployment of the MIRV system and its Soviet equivalent. This system is potentially much more destabilizing than ABM.

Article VII¹⁴¹ provides that nothing in the treaty affects the rights of the parties to conclude regional agreements establishing nuclear-free zones. The essence of this article had first appeared in language in the preamble. A Mexican proposal¹⁴² that the language be placed in the treaty in the form of a separate article was accepted by the Soviet Union¹⁴³ and the United States.¹⁴⁴

Amendment procedures and provision for conferences of review are contained in Article VIII.¹⁴⁵ Paragraph one, based upon a similar pro-

¹³⁹ See note 137 above, at 104.

¹⁴⁰ Cf. Department of State, Documents on Disarmament: 1967, Statement of ACDA Director Foster before the ENDC, Sept. 19, 1967, in defense of the Johnson Administration decision to deploy a limited system, at 402.

¹⁴¹ "ARTICLE VII

"Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories."

¹⁴² Department of State, Documents on Disarmament: 1967, at 395-401.

¹⁴³ *Ibid.* at 515-521.

¹⁴⁴ *Ibid.* at 513-515.

¹⁴⁵ "ARTICLE VIII

"1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.

"2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency.

vision in the Partial Nuclear Test Ban Treaty, requires the depositary governments to convene a conference to consider an amendment if requested to do so by one-third or more of the parties to the treaty. Paragraph two provides that an amendment shall enter into force after ratification by a special majority comprised of a majority of the parties to the treaty, including all nuclear-weapon states parties to the treaty and all parties which on the date of the amendment are members of the Board of Governors of the IAEA. An amendment will be of force only between the parties ratifying it.

Paragraph three makes provision for a review conference to be held five years after the treaty enters into force. Further conferences may be held at five-year intervals if requested by a majority of the parties.

The August 24, 1967, draft¹⁴⁶ had provided that an amendment would enter into force for all parties after approval of the qualified majority. Rumania,¹⁴⁷ Nigeria¹⁴⁸ and Canada¹⁴⁹ had objected to this on the ground that consent should be the source of any treaty obligation and without such consent to an amendment the disapproving states should not be bound. This position was accepted by the Co-Chairmen and the draft text of January 18, 1968, and succeeding drafts reflected the change.

Article IX¹⁵⁰ designates the United States, the United Kingdom and

The amendment shall enter into force for each Party that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment.

“3. Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized. At intervals of five years thereafter, a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.”

¹⁴⁶ Department of State, Documents on Disarmament: 1967, at 338-341.

¹⁴⁷ *Ibid.* at 525-526.

¹⁴⁸ *Ibid.* at 557-558.

¹⁴⁹ ENDC/PV.345 at 13.

¹⁵⁰ “ARTICLE IX

“1. This Treaty shall be open to all States for signature. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

“2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.

“3. This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositaries of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967.

the Soviet Union as depositaries. The treaty will enter into force upon the deposit of instruments of ratification by the depositaries and 40 other signatories. This article specifies how states may become parties and provides the procedures for ratification, accession and registration. All these procedures were taken from corresponding provisions of the Partial Nuclear Test Ban Treaty.

Article X,¹⁵¹ again in part based upon the Partial Nuclear Test Ban Treaty, permits withdrawal from the treaty upon three months' notice if the party determines that "extraordinary events" connected with the "subject-matter of this Treaty" have jeopardized the state's "supreme interests." An additional requirement, not found in the Partial Nuclear Test Ban Treaty, provides that notice of withdrawal must be given the Security Council, specifying the extraordinary events leading to the necessity of withdrawal. Provision is also made for a conference to be held 25 years after the treaty enters into force, when a majority of the parties will determine whether the treaty will remain in force indefinitely or for a fixed period or periods.

Although Rumania and Brazil opposed the provision in the treaty requiring a withdrawing state to submit an explanation to the Security Council,¹⁵² the United States insisted that it remain unchanged for the reason that withdrawal from such a treaty would affect the international peace and security of other states and consequently should be discussed by the Security Council.¹⁵³

The basic part of the withdrawal provision permitting withdrawal if a state's "supreme interests" are jeopardized by events connected with the treaty makes eminently good sense. A state whose supreme national interests are jeopardized by an agreement will either violate it clandestinely or repudiate it. A withdrawal provision permits a less dangerous

"4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

"5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this Treaty, and the date of receipt of any requests for convening a conference or other notices.

"6. This Treaty shall be registered by the Depositary Governments pursuant to article 102 of the Charter of the United Nations."

¹⁵¹ "ARTICLE X

"1. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

"2. Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty."

¹⁵² International Negotiations, note 9 above, at 90-91, 111.

¹⁵³ *Ibid.* at 111.

and provocative means to accomplish an end which would be reached in any event.

The August 24, 1967, draft¹⁵⁴ provided that the treaty be of unlimited duration. Italy and Switzerland objected to this on the ground that the prospect of scientific advancement of a "rapid and unpredictable" sort made it imperative that the treaty be in force for a specified number of years, later to be reviewed and amended, with the threat of lapse acting as a powerful encouragement for such amendment.¹⁵⁵ The present article represented a compromise on duration and first appeared in the January 18, 1968, draft.¹⁵⁶

Article XI lists the official languages and texts.¹⁵⁷

SECURITY ASSURANCES

The revised draft of January 18, 1968, did not contain any security assurances against nuclear blackmail or attack. A number of states, particularly the Federal Republic of Germany, India and Rumania, had been demanding such security assurances throughout the negotiations. During the debate on the January 18 draft, the Federal Republic supported a proposal that nuclear-weapon states guarantee non-nuclear-weapon states against nuclear blackmail.¹⁵⁸ Rumania proposed that nuclear-weapon states guarantee that they would not launch or threaten to launch a nuclear attack upon non-nuclear-weapon states.¹⁵⁹ The United States responded that the subject was too complicated to be dealt with by a treaty provision. Further, the United Nations was necessarily involved.¹⁶⁰

The Co-Chairmen and a representative of the United Kingdom prepared a tripartite statement on security assurances which was presented to the ENDC March 7, 1968, as a draft Security Council resolution.¹⁶¹ Nuclear aggression was held to "endanger the peace and security of all States." The Security Council would declare that it recognized that aggression with nuclear weapons "or the threat of such aggression" "would create a situation in which the Security Council and above all its nuclear-weapon state permanent members," would "act immediately in accordance with their obligations" under the Charter. The draft statement further welcomed

¹⁵⁴ See note 146 above.

¹⁵⁵ Department of State, Documents on Disarmament: 1967, at 527-528, 572-574.

¹⁵⁶ International Negotiations, note 9 above, at 110.

¹⁵⁷ "ARTICLE XI

"This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

"In witness whereof the undersigned, duly authorized, have signed this Treaty.

"Done in triplicate, at the cities of Washington, London and Moscow, this first day of July one thousand nine hundred sixty-eight."

¹⁵⁸ International Negotiations, note 9 above, at 112.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ For the text of the March 7, 1968, draft resolution, see 7 International Legal Materials 570 (1968).

statements by certain states that they would provide assistance "in accordance with the Charter" in the event of such attack or intimidation. Finally, the proposed resolution reaffirmed the "inherent right" of individual and collective self-defense recognized in Article 51 of the Charter.¹⁶² The representatives of the United States, the Soviet Union, and the United Kingdom stated that their governments would issue security declarations in support of the draft resolution.¹⁶³ On June 19, 1968, the Security Council by a 10-0 vote approved the tripartite resolution with identical wording as previously submitted by the three Powers to the ENDC.¹⁶⁴ France abstained, on the ground that meaningful security could only come after nuclear disarmament, but significantly did not cast a negative vote.¹⁶⁵

Herman Kahn and Carl Dibble have criticized the approach to avoiding nuclear weapons proliferation as manifest in the treaty as tending to freeze the super-Power status of the United States and the Soviet Union, at a time when multipolar influence and trends are becoming increasingly strong. Further, they hazarded a prophecy a year prior to the final draft that the treaty would "increase inordinately United States and Soviet obligations by giving sweeping nuclear guarantees to non-nuclear powers without increasing significantly the participation of others in this new form of 'col-

¹⁶² *Ibid.*

¹⁶³ For the texts of the security declarations of the Soviet Union, the United Kingdom and the United States, see Hearings on the Treaty on the Nonproliferation of Nuclear Weapons, note 1 above, at 43.

¹⁶⁴ "RESOLUTION OF SECURITY ASSURANCES ADOPTED BY THE UNITED NATIONS SECURITY COUNCIL, JUNE 19, 1968

"The Security Council

"Noting with appreciation the desire of a large number of states to subscribe to the treaty on the non-proliferation of nuclear weapons, and thereby to undertake not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

"Taking into consideration the concern of certain of these states that, in conjunction with their adherence to the treaty on the non-proliferation of nuclear weapons, appropriate measures be undertaken to safeguard their security,

"Bearing in mind that any aggression accompanied by the use of nuclear weapons would endanger the peace and security of all states,

"1. Recognizes that aggression with nuclear weapons or the threat of such aggression against a non-nuclear-weapon state would create a situation in which the Security Council, and above all its nuclear-weapon state permanent members, would have to act immediately in accordance with their obligations under the United Nations Charter;

"2. Welcomes the intention expressed by certain states that they will provide or support immediate assistance, in accordance with the Charter, to any non-nuclear-weapon state party to the treaty on the non-proliferation of nuclear weapons that is a victim of an act or an object of a threat of aggression in which nuclear weapons are used;

"3. Reaffirms in particular the inherent right, recognized under Article 51 of the Charter, of individual and collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

¹⁶⁵ Also abstaining were Algeria, Brazil, India, and Pakistan.

lective' security.'" ¹⁶⁶ The Report of the Senate Foreign Relations Committee recommending Senate consent to the treaty reacted to the United States declaration and the Security Council resolution as if the prophecy of Kahn and Dibble had come true. In recommending Senate consent, the Committee emphasized that the treaty was "separate and distinct" from the resolution and declaration:

The committee wishes to make the record clear that support of the Nonproliferation Treaty is in no way to be construed as approval of the security guarantee measures embodied in the United Nations resolution or the supporting U. S. declaration.¹⁶⁷

As a matter of fact, the Senate committee need not be that concerned. Neither the resolution nor the declaration creates nuclear guarantees, "sweeping" or otherwise. Rather, the surprise will come if the Federal Republic of Germany or India changes its attitude toward the treaty on the basis of those documents, which do not add or detract one point from previous commitments. The Security Council resolution adds no more assurances to non-nuclear-weapon nations than they would possess by reason of the Charter. The operative language of the resolution refers to "aggression" or the "threat of aggression" with the use of nuclear weapons against a non-nuclear-weapon state. These terms remain undefined. And the Security Council is no more bound to act than it would be by the existing language in the Charter. The veto power remains unaffected. The reaffirmation in paragraph three of the resolution of the "inherent" right of collective self-defense under Article 51 of the Charter obviously adds nothing new. The only advantage for non-nuclear-weapon states had by reason of the declarations and resolution was the affirmation of unanimity by the three major nuclear Powers against nuclear aggression or blackmail. And this goes no farther than the mutuality of interest of those nations.¹⁶⁸

¹⁶⁶ Kahn and Dibble, "Criteria for Long-Range Nuclear Control Policies," 55 Calif. Law Rev. 473, 478 (1967).

¹⁶⁷ See Senate Rep. No. 9, note 101 above, at 10.

¹⁶⁸ See the exchange between Senator Margaret Chase Smith and General Earle G. Wheeler, Chairman of the Joint Chiefs of Staff, in *Hearings on Military Implications of the Treaty on the Nonproliferation of Nuclear Weapons* before the Senate Committee on Armed Services, 91st Cong., 1st Sess., at 22 (1969). General Wheeler assured Senator Smith that the treaty in no way increased U. S. security commitments.

Paul Nitze, former Deputy Secretary of Defense, testified before the Senate Foreign Relations Committee, *Hearings on the Treaty on the Nonproliferation of Nuclear Weapons*, note 1 above, at 56, that the Defense Department worked closely with the Department of State and the ACDA on the wording of the United States declaration and the U.N. resolution. He agreed that the statements do not contain any increase in our security commitments. Secretary of State Rusk and ACDA Director William Foster testified that the Security Council resolution and the U. S. declaration did not commit the United States to any additional responsibilities other than those already assumed under the U.N. Charter, with the veto power remaining unaffected. See the questions of Senators Sparkman, Pastore, Bennett and Case, note 1 above, at 15-16, 34. Senator Case asked Secretary Rusk whether the treaty or the declaration and resolution in any way increased Presidential power to commit United States forces in the event of nuclear aggression or the threat of nuclear aggression. Secretary Rusk responded

PROSPECTS FOR THE FUTURE

Key states to watch as barometers indicating whether the treaty will receive sufficient ratifications to enter into force—and if it does whether the “right” states are parties—are West Germany, Israel, Japan and India. All could independently manufacture nuclear weapons. All have serious security problems plausibly generating the need for nuclear defense. What they do will be of critical importance to the success of the treaty. A snowballing effect will follow their action in either direction.

Though the People’s Republic of China will undoubtedly not ratify, if the treaty is ratified by a large number of states, China’s potential customers will largely be prohibited from receiving nuclear weapons. States with the technological capacity to develop nuclear weapons, such as India, Japan, and Israel, will not be likely beneficiaries of Chinese aid, regardless of treaty ratification. States closer to China (Albania, North Korea, North Viet-Nam, Cuba) are not technologically capable of mounting a nuclear weapons program.

The possible effect of the treaty upon United States security alliances has been disputed. The treaty has been described as having “the most far-reaching and unsettling effects,” producing “profound changes” upon NATO, including that of denying “to the United States the option of providing nuclear assistance to a European nuclear force.”¹⁶⁹ Dr. Robert Strausz-Hupé, testifying at the Senate Foreign Relations Committee hearings, maintained that NATO solidarity was endangered by the priority the United States has given arms control negotiations with the Soviet Union.¹⁷⁰ He urged the Senate to “reject the nuclear nonproliferation treaty,” and reject as well “the package in which it and other measures of arms control have been offered to its scrutiny.”¹⁷¹

There can be little doubt that, as Dr. Strausz-Hupé maintains,¹⁷² a major reason for Soviet support for the treaty specifically, and for Soviet participation in arms control talks generally, is its possible impact upon the position of the Federal Republic of Germany within NATO. In addition, the treaty is seen by the Soviets as one more hedge against the eventual acquisition of nuclear arms by West Germany.¹⁷³ This is not to say, however, that Soviet objectives have been accomplished, or even furthered, insofar as West Germany’s position in NATO is concerned. It is difficult to see what “profound changes” the treaty has brought about in the position of the Federal Republic and NATO.

First of all, United States law¹⁷⁴ and policy forbid the transfer of nuclear explosive devices of any type to any country, including our NATO

that neither were formal treaty commitments or Presidential prerogatives altered by the treaty, the Security Council resolution, or the U. S. declaration. *Ibid.* 40–41.

¹⁶⁹ “Reflections on the Quarter,” 11 *Orbis* 963, 967 (1968).

¹⁷⁰ See note 1 above, at 129–139.

¹⁷¹ *Ibid.* at 138.

¹⁷² See note 169 above, at 967.

¹⁷³ See Larson, note 11 above, at 148; Maggs, “The Soviet Viewpoint on Nuclear Weapons in International Law,” 29 *Law and Contemporary Problems* 956, 964–968 (1964).

¹⁷⁴ See notes 13 and 14 above.

allies. The treaty does not effect any change in this policy.¹⁷⁵ It does not prohibit the transfer of nuclear delivery vehicles or delivery systems.¹⁷⁶ Neither does it affect in any way the NATO Nuclear Planning Group.¹⁷⁷ The treaty does not prohibit the deployment of nuclear weapons owned and controlled by the United States within the territory of its NATO allies,¹⁷⁸ though the 1965 Soviet draft attempted to accomplish this.¹⁷⁹ As Dr. Strausz-Hupé observed, the ill-fated Multilateral Force would be prohibited by the treaty, for whatever overkill value such a prohibition may have. Since that fleet sank as much from well-deserved European scorn as American reticence, it is difficult to lament the prohibition. But a much more meaningful European federation which would absorb an existing nuclear force of a European state would presumably not be prohibited by

¹⁷⁵ The following questions were asked by our NATO allies in response to Arts. I and II. The official United States response follows each question.

Q.1 "What may and what may not be transferred under the draft treaty?"

A. "The treaty deals only with what is prohibited, not with what is permitted.

"It prohibits transfer to any recipient whatsoever of 'nuclear weapons' or control over them, meaning bombs and warheads. It also prohibits the transfer of other nuclear explosive devices because a nuclear explosive device intended for peaceful purposes can be used as a weapon or can be easily adapted for such use.

"It does not deal with, and therefore does not prohibit, transfer of nuclear delivery vehicles or delivery systems, or control over them to any recipient, so long as such transfer does not involve bombs or warheads."

Q.2 "Does the draft treaty prohibit consultations and planning on nuclear defense among NATO members?"

A. "It does not deal with allied consultations and planning on nuclear defense so long as no transfer of nuclear weapons or control over them results."

Q.3 "Does the draft treaty prohibit arrangements for the deployment of nuclear weapons owned and controlled by the United States within the territory of nonnuclear NATO members?"

A. "It does not deal with arrangements for deployment of nuclear weapons within allied territory as these do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling." International Negotiations, note 9 above, at 180.

¹⁷⁶ *Ibid.* See as well the comments of Secretary Rusk, note 68 above.

¹⁷⁷ Deputy Secretary of Defense Paul Nitze, appearing before the Senate Foreign Relations Committee, quoted Secretary Clark Clifford's statement to the NATO Nuclear Planning Group ministerial meeting at The Hague in April, 1968:

"The U. S. Government holds the view that the entry into force of the Nonproliferation Treaty will not interfere with the work of the Nuclear Planning Group. The U. S. Government intends to continue to pursue actively the work of the Nuclear Planning Group and to seek to find solutions satisfactory to its non-nuclear partners in NATO. It also is the view of the U. S. Government that the Nonproliferation Treaty will not hinder the further development of nuclear defense arrangements within the alliance compatible with articles I and II of the Nonproliferation Treaty."

Secretary Nitze added: "We have also assured our NATO and other allies that the treaty would not interfere with any existing nuclear arrangements." Hearings on the Treaty on the Nonproliferation of Nuclear Weapons, note 1 above, at 56.

¹⁷⁸ See notes 68 and 175 above.

¹⁷⁹ Bunn, "The Nuclear Nonproliferation Treaty," 1968 Wis. Law Rev. 766, 778.

the treaty.¹⁸⁰ Since the treaty prohibits only the "transfer" of nuclear weapons, the *succession* by a federated European state to one of its component's previously national nuclear forces would not be proscribed.

The Multilateral Force was mainly designed to placate any European desire for national nuclear forces while at the same time keeping completely centralized (*i.e.*, American) control over Western nuclear forces to preserve some degree of restraint and direction in case of nuclear war. It would seem that the treaty better achieves the latter goal while removing much of the competitive impetus from the former. The argument can be made that rather than being a divisive influence upon NATO, in fact the treaty will have the opposite effect. Germany is presently forbidden by a protocol to the Treaty of Brussels¹⁸¹ from developing nuclear weapons. The Treaty on the Non-Proliferation of Nuclear Weapons may serve to remove what may be taken as a stigma from the Federal Republic by removing the unique nature of this prohibition.

The degree of collaboration between the United States and its NATO allies¹⁸² during the negotiation of the treaty would seem to belie the assertion of Dr. Strausz-Hupé that the process of such negotiation and the content of the treaty will lessen NATO solidarity. It is not doubted, however, that bilateral arms control negotiations in the past between the Soviet Union and the United States have caused such divisions.¹⁸³

NATO is valuable as it contributes to international security. It is a means and should not be treated as if it were an end in itself. It remains essentially unaffected by the treaty. Most important, no alliance system can provide protection from the dangers inherent in the possession of nuclear weapons by a continually growing number of states.

There is no question but that military viewpoints on matters of national security connected with the treaty were taken into account at every stage of the negotiating process. General Earle Wheeler, Chairman of the Joint Chiefs of Staff, reported to the Senate Armed Services Committee that the Joint Chiefs had made 14 formal treaty proposals since the negotiations began. Each resulted in a change in the draft treaty aimed at strengthening the security interests of the United States and its allies. The Joint Chiefs asked that the treaty not "disrupt any existing defense alliances" of the United States; that it not "prohibit deployment of United States owned and controlled nuclear weapons within the territory of our non-nuclear NATO allies"; that it not prohibit the use of nuclear weapons by the United States when its national security so demanded; and that the

¹⁸⁰ Secretary of State Rusk testified before the Senate Foreign Relations Committee that the treaty did not affect the question of European unity; that it "would not bar succession by a new federated European state to the nuclear status of one of its former components. . . . While not dealing with succession by such a federated state, the treaty would bar transfer of nuclear weapons (including ownership) or control over them to any recipient, including a multilateral entity." Hearings on the Treaty on the Nonproliferation of Nuclear Weapons, note 1 above, at 5-6.

¹⁸¹ See note 17 above.

¹⁸² See discussion at p. 718 above.

¹⁸³ See Bechhoefer, *Postwar Negotiations for Arms Control* (1961).

treaty not "involve an obligation for the automatic commitment of United States military forces." They also asked for a withdrawal clause and safeguards provisions. General Wheeler reported that every request was met.¹⁸⁴ It is difficult to see how the extension to other nations of prohibitions already substantially upon the United States¹⁸⁵ is not in our national interest.

The Treaty on the Non-Proliferation of Nuclear Weapons was described by President Lyndon Johnson as "a triumph of sanity and of man's will to survive."¹⁸⁶ Historians of the future may look upon it as one of the two or three great documents of the postwar era. Whether it will be so regarded will probably depend upon the implementation of Article VI. The basic prophylactic provisions, Articles I and II, are important in themselves but are of primary value as instruments through which the world may gain a few years' respite from uncontrolled proliferation of nuclear weaponry; years which must be used to control the so-called "vertical proliferation" of the two super-Powers. If Article VI is quickly and effectively implemented through agreements leading to missile limitation and stockpile reduction, then the pressures upon presently non-nuclear-weapon nations to acquire nuclear weapons will diminish. Without such agreements the growing pressures upon select non-nuclear-weapon states would seem almost inevitably to lead to the eventual failure of the treaty.

¹⁸⁴ Note 168 above, at 14-15. See also General Wheeler's testimony in the Hearing on the Treaty on the Nonproliferation of Nuclear Weapons, note 1 above, at 12. The JCS had a liaison officer at the planning sessions, White House meetings, the meetings of the Committee of Principals, and at all ENDC sessions. *Ibid.* at 57; note 167 above, at 14-15.

¹⁸⁵ See notes 13 and 14 above.

¹⁸⁶ See note 2 above.